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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-205874

DATE: January 15, 1982

MATTER OF: Pacific Coast Welding & Machine, Inc.

DIGEST:

Where an RFP amendment extending the date for the receipt of proposals does not specify an hour on the extended closing date, the hour remains as stated initially in the RFP.

Pacific Coast Welding & Machine, Inc. protests the Department of the Navy's rejection of the firm's proposal under request for proposals (RFP) N00024-81-R-7269(Q) to design and fabricate a prototype deep rescue chamber. The proposal was rejected as late, but Pacific Coast contends that it in fact was delivered to the contracting activity on time.

We deny the protest. We do so without obtaining a report from the procuring agency, since it is clear from the material furnished by Pacific Coast that the protest is without legal merit. See Air Services Company, B-204532, September 22, 1981, 81-2 CPD 240.

The RFP as issued set the hour and date that proposals were due as 2 p.m. on October 23, 1981. Four amendments were issued, each extending the date for receipt of proposals. None mentioned a new hour for receipt. Amendment 0004 was effective on November 19, which was the date that Amendment 0003 set for proposal receipt, and extended the due date to November 23.

Pacific Coast, responding to oral information that the due date had been extended from November 19 (the firm did not receive Amendment 0004 until November 25), hand-delivered its proposal at 2:30 p.m. on November 23. The contracting officer rejected the proposal because in his view proposals had to be received by 2 p.m. In this respect, as stated above, the hour and date initially set for proposal receipt was 2 p.m. on October 23, and none of the four amendments changing the date mentioned an hour.

Pacific Coast protested to the contracting officer that because Amendment 0004 did not set a particular hour for the November 23 submission, proposals could be submitted any time before the close of business on November 23. The protester cites Defense Acquisition Regulation (DAR) § 3-506(b) (1976 ed.), which states:

"* * * Unless a specific time for receipt of proposals is stated in the request for proposals, the time for receipt shall be the time for normal close of business of the office designated for receipt of proposals on the date proposals are due."

The contracting officer denied Pacific Coast's protest. The contracting officer concluded that the provision in DAR § 3-506(b) did not apply since a specific hour in fact was set in the RFP, that is, 2 p.m. While that hour was expressly stated only with respect to the original due date of October 23, the contracting officer noted that each amendment to the RFP was effected by Standard Form (SF) 30, "Amendment of Solicitation/Modification of Contract." Block 12 of SF 30 states that "Except as provided herein, all terms and conditions of * * * [the RFP], as heretofore changed, remain unchanged and in full force and effect." Based on this Office's decisions 51 Comp. Gen. 149 (1971) and New Jersey Department of Community Affairs, B-181100, May 29, 1974, 74-1 CPD 290, which dealt with similar situations, the contracting officer concluded that the time for receipt never changed from 2 p.m.

The contracting officer also noted that because Amendment 0004 was effective on the day that, according to Amendment 0003, proposals were due, contracting officials on that day orally advised all prospective offerors, including Pacific Coast, that the date and hour were being extended to November 23 at 2 p.m. The contracting officer asserted that Pacific Coast's knowledge of the hour is confirmed by the fact that immediately after delivering Pacific Coast's proposal the firm's Vice President for Contract Administration prepared and furnished a description of the travel delays "surrounding the * * * late delivery" for consideration as "mitigating circumstances."

Pacific Coast states that it recognizes that the rule against accepting a proposal received after the date and hour set in a solicitation is strict. The firm notes, however,

that this Office has recognized that the rule occasionally leads to harsh results, and therefore asserts that it is incumbent on the Government to state the hour and date for proposal receipt with "crystal clarity," which the firm suggests was not the case here. Pacific Coast contends that absent that clarity, DAR § 3-506(b) sets the hour for receipt as the close of business on the date specified. Pacific Coast speculates that DAR § 3-506(b) either did not exist or did not apply in the two cases cited by the contracting officer. In this respect, Pacific Coast also argues that its courier's statement regarding the reasons for what he apparently believed was the late delivery of the firm's proposal should be disregarded, since as a legal matter the proposal actually was delivered on time.

Pacific Coast also denies that it received the November 19 telephone call from the Navy, and asserts that it learned only from a congressional source on November 19 that the due date was being extended to November 23.

We agree with Pacific Coast, of course, that the Government must state solicitation requirements and provisions in clear and unambiguous terms. Nonetheless, we agree with the contracting officer's view that the time for the receipt of proposals in this case clearly always remained at 2 p.m., as stated in the RFP before any amendments were issued.

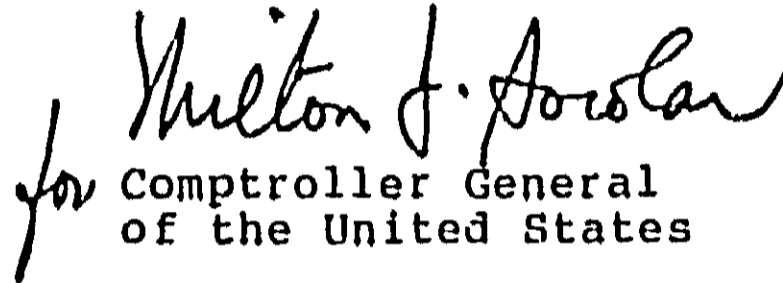
Initially, we point out that of the two decisions cited by the contracting officer in denying Pacific Coast's protest to the Army, only the 1971 case involved a military procurement. The late proposal rule in effect at that time was stated in Armed Services Procurement Regulation § 3-506(c) (September 30, 1970, Rev. 8) and included the same language as in DAR § 3-506(b) with respect to the time for proposal receipt if none is designated in the RFP.

In each of the two decisions cited, an amendment was issued expressly extending the date that offers would be due and not mentioning the hour. Relying on the language in block 12 of SF 30 that we quoted above, we held that it should have been clear that the amendment changed only the date and not the hour for the receipt of proposals. In New Jersey Department of Community Affairs, we stated that it was unreasonable for an offeror to conclude otherwise from the amendment alone.

Both cases clearly support the rejection of Pacific Coast's proposal as late. The RFP as issued set the hour and date for receipt of proposals. Therefore, DAR § 3-506(b) is

inapposite, since it applies only where an RFP does not specify a time for receipt. None of the four amendments extending the date mentioned a new hour. Each amendment specifically provided that except as stated in the amendment, all RFP terms and conditions were unchanged. Under those circumstances, it should have been clear to Pacific Coast that the hour for the receipt of offers never changed from 2 p.m. as specified initially, and proposals therefore were due by 2 p.m. on November 23 according to Amendment 0004. Thus, the Navy properly rejected Pacific Coast's proposal, submitted at 2:30 p.m. on November 23, as late.

The protest is summarily denied.


for Comptroller General
of the United States